

Notice of Allowability

Application No.

09/988,185

Examiner

William J. Klimowicz

Applicant(s)

OLDERMANN ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed September 8, 2004.
2. ☒ The allowed claim(s) is/are 9, 10, 11, 18 and 19, renumbered as claims 1, 2, 4, 3 and 5, respectively.
3. ☒ The drawings filed on 19 November 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/311,247.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 10252004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Patricia A. Verlangieri on October 25, 2004.

The application has been amended as follows:

Abstract Amendment

The abstract has been deleted in its entirety and replaced by the following abstract:

--A device for rotating inside of a disk player and/or recorder a disk shaped data carrier which takes into account that the rotating disk may be eccentered from an imposed rotation axis. A side moving apparatus allows the rotating disk and a fixing device to which the disk is removably fixed, to move inside the player and/or recorder in a rotation plane substantially perpendicular to an axis of rotation of the fixing device. The rotating disk and the fixing device go into a gyroscopic movement inside the player. A plurality of examples to realize the invention are described.--

Specification Amendment

With regard to page 1, line 1, prior to the section "BACKGROUND OF THE INVENTION" but after the title of the invention, the following has been inserted --This application is a division of U.S. Patent Application Serial Number 09/311,247, filed May 13, 1999, which is now U.S. Patent No. 6,366,552.--

Claim Amendments

(I) Non-elected claims 2, 4, 8, 12-16 and 20 have been cancelled in their entirety.

REASONS FOR ALLOWANCE

In view of the Appellants' arguments presented in an Appeal Brief filed September 8, 2004, wherein some arguments were presented for the first time, the Examiner has been persuaded that the claims previously rejected, are in fact allowable.

The prior art of record fails to fairly, teach, show or suggest, by either anticipating or rendering obvious, the invention as set forth in the claims of the instant application.

More concretely, as set forth in the sole independent claim, i.e., claim 9, the instant invention, as defined by claim 9, and drawn exclusively to the elected embodiment as depicted in Figure 6 of the Appellants' disclosure, include a device (**Figure 6**) for rotating inside of a disk player and/or recorder **82** (e.g., see Appellants' specification at page 11, line 27 through page 12, line 16 and also Figure 6) a disk shaped data carrier (e.g., **1**) having an opening (e.g., **2**) around a center of the disk shaped carrier **1**, the device (**Figure 6**) comprising fixing means

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(means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification) for removably fixing the data carrier 1 by inserting a part of the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification) in the opening 2. The fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification) comprises an elongated part 33. Driving means (means structure which corresponds to element 6, e.g., an "electrical motor" in the Appellants' specification) are provided for rotating the data carrier 1 by acting on the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification). The driving means (means structure which corresponds to element 6, e.g., an "electrical motor" in the Appellants' specification) being at least partly mechanically connected to the disk player and/or recorder 82, and the driving means (means structure which corresponds to element 6, e.g., an "electrical motor" in the Appellants' specification) comprising a rotor magnet 31 which is mounted on the elongated part 33 and a stator electro-magnet 35 mounted on the player and/or recorder 82 such that the rotor magnet 31 and the stator electro-magnet 35 cooperate as an electric motor.

Additionally, centering means (means structure which corresponds to "point bearing" 21 [see page 12, line 1 of Appellants' specification] and which includes conical recess 22 in the Appellants' specification) is disposed on the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification) for positioning the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants' specification) in a central position when the driving means (means structure which corresponds to element 6, e.g., an "electrical motor" in the Appellants' specification) stops driving the data carrier 1.

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It is noted that claim 9 includes elements (e.g., fixing means, centering means) invoking 35 U.S. C. 112 sixth paragraph (i.e., means-plus-function).

35 USC sixth paragraph recites:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Thus, the recited elements including at least the fixing means and the centering means invoke 35 USC 112 6th paragraph and have been interpreted as such.

The closest prior art, as argued previously by the Examiner, includes Dunfield et al. (US 5,587,617). The Examiner previously maintained that Dunfield et al. (US 5,587,617) discloses a fixing means (including flat surface of hub (317); elongated shaft (316)) and a centering means (tip end of (316) which makes point contact within base (312) - FIG. 3). The Examiner then broadly indicated that the centering means was disposed "on" the fixing means for positioning the fixing means (including flat surface of hub (317); elongated shaft (316)) in a central position when said driving means stops driving said data carrier (since any offset of elongated tip portion within its sleeve portion of (312), naturally returns the tip of elongated portion (316) to its lowermost seating within sleeve portion (312) due to the internally inclined inner surfaces under gravity - hence a centering means). The Examiner then made the point that, in the rejection made FINAL (Response to Arguments section):

Clearly, the tip end of (316) (i.e., the centering means) is provided on the fixing means (including flat surface of hub (317); elongated shaft (316)) in as much as a wheel is considered to be provided on a car. That is, although the wheels are provided "under" the car, they are still considered by the layperson and those associated in the automotive industry as being provided "on" the car. Similarly, although the tip (316) as disclosed by Dunfield et al. (US 5,587,617) is depicted

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in the FIGs. as being “under” the fixing means when mounted in an upright position, the tip is still considered to be “on” the fixing means.

It is noted, however, that since claim 9 invokes the fixing means and centering means under the statute 35 USC 112 6th paragraph, the claims must be “construed to cover the *corresponding structure*, material, or acts described in the specification and equivalents thereof.”

The structure for the fixing means as set forth in the Appellants’ specification corresponds to a plate 4 and bobby 5, onto which a disk is removably placed, the bobby 5 engaging the central opening of the disc medium 1. Moreover still, the claimed “centering means” corresponds to the structure of a “point bearing” 21 (see page 12, line 1 of Appellants’ specification) and which includes conical recess 22 in the Appellants’ specification.

The centering means is disposed on the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants’ specification) for positioning the fixing means (means structure which corresponds to plate 4 and bobby 5 in the Appellants’ specification) in a central position when the driving means (means structure which corresponds to element 6, e.g., an “electrical motor” in the Appellants’ specification) stops driving the data carrier 1.

Thus, interpreted in the strict and limiting sense of 35 USC 112 6th paragraph, Dunfield et al. (US 5,587,617) does not show a means the “centering means disposed on the fixing means for positioning the fixing means in a central position when the driving means stops driving the data carrier” and cannot, when viewed in the context of the Appellants’ specification under 35 USC 112 6th paragraph, be viewed as a centering means disposed on the fixing means as set forth in sole independent claim 9 and cannot be reasonably considered to be an equivalent thereof, since

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as argued by the Appellants, "Dunfield et al. discloses a completely different arrangement." See Appellants' Brief page 5, second paragraph. The centering means (316) of Dunfield et al. is provided in a downwardly extending manner and is unitarily connected to the hub (317). The Appellants' centering means 21 is completely and exclusively formed as a separate element from the fixing means (plate 4 and bobby 5), with the fixing means extending upwardly relative to a disc playing surface, and the centering means extending downwardly to engage the fixing means.

Additionally, Dunfield et al. (US 5,587,617) does not provide, alone or in combination with the art of record or general knowledge within the art, any suggestion or teaching for the invention as set forth in the independent claim 9.

Furthermore, an update of a search previously made does not detect the combined claimed elements as set forth in the pending claims. Additionally, the reasons for allowance of the claims over the prior art of record is believed to be clear from the prosecution history taken as a whole, in view of the previous rejections based on the applied prior art, supplemented by the reasons espoused by the Appellants in the Appeal Brief filed September 8, 2004, as to why the prior art fails to read on the claims of record. In view of the arguments and a closer, more stricter interpretation of the claims in light of 35 USC 112 6th paragraph, the Examiner has determined that the scales of patentability, based on the preponderance of the evidence, tip slightly in favor of the Appellants. That is, based on a preponderance of the evidence, the Appellants' arguments, the application of the art, and the record as a whole, and recent USPTO Board of Appeals decisions which strictly interpret 35 USC 112 6th paragraph, the rejections previously made by the Examiner are more likely than not, unsustainable, for the reasons set

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forth, *supra*, and as further supplemented by the Appellants' Appeal Brief filed September 8, 2004.

Conclusion

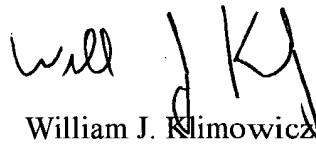
Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Klimowicz whose telephone number is (703) 305-3452. The examiner can normally be reached on Monday-Thursday (6:30AM-5:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (703) 305-9687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'William J. Klimowicz', is positioned above the printed name.

William J. Klimowicz
Primary Examiner
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WJK